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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/035,136	03/05/98	GROVE	

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RICHMAN, EXAMINER

ART UNIT

PAPER NUMBER

12/21/98

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Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/035,136

Applicant(s)

Freer et al

Examiner

Glenn Richman

Group Art Unit

3733



☒ Responsive to communication(s) filed on 4/14/98

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-36 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☐ Claim(s) _____ is/are rejected.

☒ Claim(s) 1-36 is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 2

☐ Interview Summary, PTO-413

☒ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-36 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1 and 34 recite the limitation "calf plate". There is insufficient antecedent basis for this limitation in the claim.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mizrachy in view of Beard et al.

Mizrachy discloses a calf member having a heel end and a knee end (10), a baseplate having a heel end and a toe end (12), calf plate and said base plate are rigidly attached to one another (15), a footplate being rotatably attached to said heel end of said baseplate (14), an inflatable bellows (21), securing structure constructed and arranged to secure said patient's foot such that said footplate and foot move together (11).

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Mizrachy discloses a pump (col. 3, lines 35-39); however, the pump does not use a fluid for inflating the Bellows. It would have been obvious to use a fluid with Mizrachy's pump and Bellows, for inflating the bellows, as it is well known in the art, to use a fluid to inflate a bellows, and as Mizrachy's bellows is being inflated in an equivalent manner to the applicant's.

Mizrachy does not disclose a controller coupled to a sensor for transmitting a signal from a muscle of a patient.

Beard et al disclose an EMG signal used to control a feedback resistance device (abstract).

It would have been obvious to use Beard et al's feedback device, with Mizrachy's pump, as it is well known to use an EMG signal for the controlling of a resistance device, as taught by Beard et al.

Claims 2-316 are all obvious design choices and are within the scope of Mizrachy and Beard et al.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Cook discloses a repetitive strain injury assessment device.

Bui et al disclose a myostimulator control.

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December 16, 1998


Glenn Richman
Primary Examiner
AU 3733